

REFERENCE TITLE: **employment discrimination; prohibition**

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2580

Introduced by
Representatives Cajero Bedford, Garcia M, Kirkpatrick, Ulmer, Senators
Allen, Landrum Taylor

AN ACT

**AMENDING SECTIONS 41-1463 AND 41-1464, ARIZONA REVISED STATUTES; RELATING TO
DISCRIMINATION IN EMPLOYMENT.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1463, Arizona Revised Statutes, is amended to
3 read:

4 41-1463. Discrimination; unlawful practices; definition

5 A. Nothing contained in this article shall be interpreted to require
6 that the less qualified be preferred over the better qualified simply because
7 of race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
8 ORIENTATION, MARITAL STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY
9 STATUS, PREGNANCY, age, disability or national origin.

10 B. It is an unlawful employment practice for an employer:

11 1. To fail or refuse to hire or to discharge any individual or
12 otherwise to discriminate against any individual with respect to the
13 individual's compensation, terms, conditions or privileges of employment
14 because of the individual's race, color, religion, ~~sex~~ GENDER, GENDER
15 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, PAST OR PRESENT
16 ACTIVE OR RESERVE MILITARY STATUS, PREGNANCY, age, disability or national
17 origin.

18 2. To limit, segregate or classify employees or applicants for
19 employment in any way ~~which~~ THAT would deprive or tend to deprive any
20 individual of employment opportunities or otherwise adversely affect the
21 individual's status as an employee, because of the individual's race, color,
22 religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION,
23 MARITAL STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY STATUS, PREGNANCY,
24 age, disability or national origin.

25 3. To fail or refuse to hire, to discharge, ~~or~~ or to otherwise
26 discriminate against any individual based on the results of a genetic test
27 received by the employer, notwithstanding subsection I, paragraph 2 of this
28 section.

29 C. It is an unlawful employment practice for an employment agency to
30 fail or refuse to refer for employment or otherwise to discriminate against
31 any individual because of the individual's race, color, religion, ~~sex~~ GENDER,
32 GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, PAST OR
33 PRESENT ACTIVE OR RESERVE MILITARY STATUS, PREGNANCY, age, disability or
34 national origin or to classify or refer for employment any individual on the
35 basis of the individual's race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY
36 OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, PAST OR PRESENT ACTIVE OR
37 RESERVE MILITARY STATUS, PREGNANCY, age, disability or national origin.

38 D. It is an unlawful employment practice for a labor organization:

39 1. To exclude or to expel from its membership or otherwise to
40 discriminate against any individual because of the individual's race, color,
41 religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION,
42 MARITAL STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY STATUS, PREGNANCY,
43 age, disability or national origin.

1 2. To limit, segregate or classify its membership or applicants for
2 membership or to classify or fail or refuse to refer for employment any
3 individual in any way ~~which~~ THAT would deprive or tend to deprive the
4 individual of employment opportunities or would limit those employment
5 opportunities or otherwise adversely affect the individual's status as an
6 employee or as an applicant for employment because of the individual's race,
7 color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
8 ORIENTATION, MARITAL STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY
9 STATUS, PREGNANCY, age, disability or national origin.

10 3. To cause or attempt to cause an employer to discriminate against an
11 individual in violation of this section.

12 E. It is an unlawful employment practice for any employer, labor
13 organization or joint labor-management committee controlling apprenticeship
14 or other training or retraining programs, including on-the-job training
15 programs, to discriminate against any individual because of the individual's
16 race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
17 ORIENTATION, MARITAL STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY
18 STATUS, PREGNANCY, age, disability or national origin in admission to or
19 employment in any program established to provide apprenticeship or other
20 training and, if the individual is an otherwise qualified individual with a
21 disability, to fail or refuse to reasonably accommodate the individual's
22 disability.

23 F. With respect to an individual with a disability, it is an unlawful
24 employment practice for a covered entity to:

25 1. Participate in any contractual or other arrangement or relationship
26 that has the effect of subjecting a qualified individual with a disability
27 who applies with or who is employed by the covered entity to unlawful
28 employment discrimination.

29 2. Use standards, criteria or methods of administration that have the
30 effect of discriminating on the basis of disability or that perpetuate the
31 discrimination of others who are subject to common administrative control.

32 3. Exclude or otherwise deny equal jobs or benefits to a qualified
33 individual because of the known disability of an individual with whom the
34 qualified individual is known to have a relationship or association.

35 4. Not make reasonable accommodations to the known physical or mental
36 limitations of an otherwise qualified individual with a disability who is an
37 applicant or employee unless the covered entity can demonstrate that the
38 accommodation would impose an undue hardship on the operation of the business
39 of the covered entity.

40 5. Deny employment opportunities to a job applicant or employee who is
41 an otherwise qualified individual with a disability if the denial is based on
42 the need of the covered entity to make reasonable accommodation to the
43 physical or mental impairment of the applicant or employee.

1 6. Use qualification standards, employment tests or other selection
2 criteria that screen out or tend to screen out an individual with a
3 disability or a class of individuals with disabilities, unless the standard,
4 test or other selection criteria, as used by the covered entity, is shown to
5 be job related for the position in question and is consistent with business
6 necessity.

7 7. Fail to select and administer tests relating to employment in the
8 most effective manner to ensure that, when the test is administered to a job
9 applicant or employee who has a disability that impairs sensory, manual or
10 speaking skills, the test results accurately reflect the skills, ~~OR~~ aptitude
11 or whatever other factor of the applicant or employee that the test purports
12 to measure, rather than reflecting the impaired sensory, manual or speaking
13 skills of the applicant or employee, except if the skills are the factors
14 that the test purports to measure.

15 G. Notwithstanding any other provision of this article, it is not an
16 unlawful employment practice:

17 1. For an employer to hire and employ employees, for an employment
18 agency to classify or refer for employment any individual, for a labor
19 organization to classify its membership or classify or refer for employment
20 any individual, ~~or~~ or for an employer, labor organization or joint
21 labor-management committee controlling apprenticeship or other training or
22 retraining programs to admit or employ any individual in any such program, on
23 the basis of the individual's religion, ~~sex~~ GENDER or national origin in
24 those certain instances when religion, ~~sex~~ GENDER or national origin is a
25 bona fide occupational qualification reasonably necessary to the normal
26 operation of that particular business or enterprise.

27 2. For any school, college, university or other educational
28 institution or institution of learning to hire and employ employees of a
29 particular religion if the school, college, university or other educational
30 institution or institution of learning is in whole or in substantial part
31 owned, supported, controlled or managed by a particular religion or religious
32 corporation, association or society, or if the curriculum of the school,
33 college, university or other educational institution or institution of
34 learning is directed toward the propagation of a particular religion.

35 3. For an employer to fail or refuse to hire or employ any individual
36 for any position, for an employment agency to fail or refuse to refer any
37 individual for employment in any position or for a labor organization to fail
38 or refuse to refer any individual for employment in any position, if both of
39 the following apply:

40 (a) The occupancy of the position or access to the premises in or upon
41 which any part of the duties of the position are performed or are to be
42 performed is subject to any requirement imposed in the interest of the
43 national security of the United States under any security program in effect
44 pursuant to or administered under any statute of the United States or any
45 executive order of the president of the United States.

1 (b) The individual has not fulfilled or has ceased to fulfill that
2 requirement.

3 4. With respect to age, for an employer, employment agency or labor
4 organization:

5 (a) To take any action otherwise prohibited under subsection B, C or D
6 of this section if age is a bona fide occupational qualification reasonably
7 necessary to the normal operation of the particular business or if the
8 differentiation is based on reasonable factors other than age.

9 (b) To observe the terms of a bona fide seniority system or any bona
10 fide employee benefit plan, such as a retirement, pension, deferred
11 compensation or insurance plan, which is not a subterfuge to evade the
12 purposes of the age discrimination provisions of this article, except that no
13 employee benefit plan may excuse the failure to hire any individual and no
14 seniority system or employee benefit plan may require or permit the
15 involuntary retirement of any individual specified by section 41-1465 because
16 of the individual's age.

17 (c) To discharge or otherwise discipline an individual for good cause.

18 5. FOR A RELIGIOUS ORGANIZATION, INCLUDING AN EDUCATIONAL INSTITUTION
19 SUBSTANTIALLY CONTROLLED OR SUPPORTED BY A RELIGIOUS ORGANIZATION, TO FAIL TO
20 HIRE, REFUSE TO HIRE, REFUSE TO PROMOTE OR TERMINATE AN EMPLOYEE ON THE BASIS
21 OF THAT EMPLOYEE'S GENDER, GENDER IDENTITY OR EXPRESSION OR SEXUAL
22 ORIENTATION, IF THE POSITION IS DIRECTLY RELATED TO THE RELIGIOUS FUNCTIONS
23 OF THE ORGANIZATION OR DIRECTLY INVOLVED IN THE PROVISION OF EDUCATION TO
24 STUDENTS OF AN EDUCATIONAL INSTITUTION SUBSTANTIALLY CONTROLLED OR SUPPORTED
25 BY A RELIGIOUS ORGANIZATION.

26 H. As used in this article, unlawful employment practice does not
27 include any action or measure taken by an employer, labor organization, joint
28 labor-management committee or employment agency with respect to an individual
29 who is a member of the communist party of the United States or of any other
30 organization required to register as a communist-action or communist-front
31 organization by final order of the subversive activities control board
32 pursuant to the subversive activities control act of 1950.

33 I. Notwithstanding any other provision of this article, it is not an
34 unlawful employment practice:

35 1. For an employer to apply different standards of compensation or
36 different terms, conditions or privileges of employment pursuant to a bona
37 fide seniority or merit system or a system ~~which~~ THAT measures earnings by
38 quantity or quality of production or to employees who work in different
39 locations, provided that these differences are not the result of an intention
40 to discriminate because of race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY
41 OR EXPRESSION, MARITAL STATUS, PAST OR PRESENT ACTIVE OR
42 RESERVE MILITARY STATUS, PREGNANCY, AGE or national origin.

43 2. For an employer to give and act upon the results of any
44 professionally developed ability test, provided that the test, its
45 administration or action upon the results is not designed, intended or used

1 to discriminate because of race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY
2 OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, PAST OR PRESENT ACTIVE OR
3 RESERVE MILITARY STATUS, PREGNANCY, AGE or national origin.

4 3. For any employer to differentiate upon the basis of ~~sex~~ GENDER,
5 GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, PAST OR
6 PRESENT ACTIVE OR RESERVE MILITARY STATUS, PREGNANCY or disability in
7 determining the amount of the wages or compensation paid or to be paid to
8 employees of the employer if the differentiation is authorized by the
9 provisions of section 6(d) or section 14 of the fair labor standards act of
10 1938, as amended (29 United States Code section 206(d)).

11 J. Nothing contained in this chapter applies to any business or
12 enterprise on or near an Indian reservation with respect to any publicly
13 announced employment practice of the business or enterprise under which a
14 preferential treatment is given to any individual because the individual is
15 an Indian living on or near a reservation.

16 K. Nothing contained in this article or article 6 of this chapter
17 requires any employer, employment agency, labor organization or joint
18 labor-management committee subject to this article to grant preferential
19 treatment to any individual or group because of the race, color, religion,
20 ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL
21 STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY STATUS, PREGNANCY or
22 national origin of the individual or group on account of an imbalance ~~which~~
23 ~~THAT~~ may exist with respect to the total number or percentage of persons of
24 any race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
25 ORIENTATION, MARITAL STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY
26 STATUS, PREGNANCY or national origin employed by any employer, referred or
27 classified for employment by any employment agency or labor organization,
28 admitted to membership or classified by any labor organization or admitted to
29 or employed in any apprenticeship or other training program, in comparison
30 with the total number or percentage of persons of that race, color, religion,
31 ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL
32 STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY STATUS, PREGNANCY or
33 national origin in any community, state, section or other area, or in the
34 available ~~work-force~~ WORKFORCE in any community, state, section or other
35 area. ~~NOTHING CONTAINED IN THIS ARTICLE OR ARTICLE 6 OF THIS CHAPTER~~
36 ~~REQUIRES ANY EMPLOYER, EMPLOYMENT AGENCY, LABOR ORGANIZATION OR JOINT~~
37 ~~LABOR-MANAGEMENT COMMITTEE SUBJECT TO THIS ARTICLE TO RETAIN OR MAINTAIN~~
38 ~~RECORDS REGARDING AN INDIVIDUAL'S OR GROUP'S GENDER, GENDER IDENTITY OR~~
39 ~~EXPRESSION OR SEXUAL ORIENTATION.~~

40 L. Nothing in the age discrimination prohibitions of this article may
41 be construed to prohibit compulsory retirement of any employee who has
42 attained sixty-five years of age and who, for the two year period immediately
43 before retirement, is employed in a bona fide executive or high policymaking
44 position, if the employee is entitled to an immediate nonforfeitable annual
45 retirement benefit from a pension, profit sharing, savings or deferred

1 compensation plan or any combination of plans of the employer for the
2 employee, ~~which~~ THAT equals, in the aggregate, at least forty-four thousand
3 dollars. In applying the retirement benefit test of this subsection, if any
4 retirement benefit is in a form other than a straight life annuity, with no
5 ancillary benefits, or if employees contribute to the plan or make rollover
6 contributions, the benefit shall be adjusted in accordance with rules adopted
7 by the division so the benefit is the equivalent of a straight life annuity,
8 with no ancillary benefits, under a plan to which employees do not contribute
9 and under which no rollover contributions are made.

10 M. A covered entity may require that an individual with a disability
11 shall not pose a direct threat to the health or safety of other individuals
12 in the workplace. For the purposes of this subsection, "direct threat" means
13 a significant risk to the health or safety of others that cannot be
14 eliminated by reasonable accommodation.

15 N. THE CLASSIFICATIONS APPLICABLE TO AN UNLAWFUL EMPLOYMENT PRACTICE
16 PRESCRIBED IN THIS SECTION RELATING TO GENDER IDENTITY OR EXPRESSION, SEXUAL
17 ORIENTATION, MARITAL STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY
18 STATUS OR PREGNANCY DO NOT APPLY TO A BUSINESS THAT EMPLOYS FEWER THAN FIFTY
19 EMPLOYEES DURING ANY ONE CALENDAR YEAR.

20 ~~N.~~ O. For the purposes of this section and section 41-1481, with
21 respect to employers or employment practices involving a disability,
22 "individual" means a qualified individual with a disability.

23 Sec. 2. Section 41-1464, Arizona Revised Statutes, is amended to read:
24 41-1464. Other unlawful employment practices; opposition to
25 unlawful practices; filing of charges; participation
26 in proceedings; notices and advertisements for
27 employment

28 A. It is an unlawful employment practice for an employer to
29 discriminate against any ~~of his~~ employees or applicants for employment, for
30 an employment agency or joint labor-management committee controlling
31 apprenticeship or other training or retraining programs, including on-the-job
32 training programs, to discriminate against any individual or for a labor
33 organization to discriminate against any member or applicant for membership
34 because the member or applicant has opposed any practice ~~which~~ THAT is an
35 unlawful employment practice under this article or has made a charge,
36 testified, assisted or participated in any manner in an investigation,
37 proceeding or hearing under article 6 of this chapter.

38 B. It is AN unlawful employment practice for an employer, labor
39 organization, employment agency or joint labor-management committee
40 controlling apprenticeship or other training or retraining programs,
41 including on-the-job training programs, to print or publish or cause to be
42 printed or published any notice or advertisement relating to employment by
43 ~~such~~ an employer or membership in or any classification or referral for
44 employment by ~~such~~ a labor organization, ~~or relating to~~ any classification or
45 referral for employment by ~~such~~ an employment agency or ~~relating to~~ admission

1 or ~~to~~ employment in any program established to provide apprenticeship or
2 other training by ~~such~~ a joint labor-management committee indicating any
3 preference, limitation, specification or discrimination based on race, color,
4 religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION,
5 MARITAL STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY STATUS, PREGNANCY
6 or national origin, except that such a notice or advertisement may indicate a
7 preference, limitation, specification or discrimination based on religion,
8 ~~sex~~ GENDER or national origin when religion, ~~sex~~ GENDER, GENDER IDENTITY OR
9 EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, PAST OR PRESENT ACTIVE OR
10 RESERVE MILITARY STATUS, PREGNANCY or national origin is a bona fide
11 occupational qualification for employment.

12 C. It is unlawful for an employer, labor organization or employment
13 agency to print or publish or cause to be printed or published any notice or
14 advertisement relating to employment by an employer or membership in or any
15 classification or referral for employment by a labor organization ~~or relating~~
16 ~~to any classification or referral for employment by a labor organization~~ or
17 relating to any classification or referral for employment by an employment
18 agency, indicating any preference, limitation, specification or
19 discrimination based on age, except ~~such a~~ THAT THE notice or advertisement
20 may indicate a preference, limitation, specification or discrimination based
21 on age when age is a bona fide occupational qualification for employment.

22 D. THE CLASSIFICATIONS APPLICABLE TO AN UNLAWFUL EMPLOYMENT PRACTICE
23 PRESCRIBED IN THIS SECTION RELATING TO GENDER IDENTITY OR EXPRESSION, SEXUAL
24 ORIENTATION, MARITAL STATUS, PAST OR PRESENT ACTIVE OR RESERVE MILITARY
25 STATUS OR PREGNANCY DO NOT APPLY TO A BUSINESS THAT EMPLOYS FEWER THAN FIFTY
26 EMPLOYEES DURING ANY ONE CALENDAR YEAR.